IN THE HIGH COURT OF JUDICATURE AT PATNA
COM PET No.6 of 2006
J.Thomas & Co.Pvt.Limited
Versus
M/S Ram Bahadur Thakur Limited
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For the petitioner: Mr. N. Ganguli, Advocate
For the respondent: Mr. Arvind Shukla, Official Liquidator
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28. 14.7.2011 The application has been filed seeking leave of this Court for withdrawing the Company Petition No.6 of 2006. Further direction has been sought to the Official Liquidator to pay a sum of Rs. 2,00,000/- with interest as deposited by the petitioner on the basis of the order dated 31.7.2008 of this Court.

Learned counsel for the petitioner submits that the said amount as an interim order with regard to payment of cost had been directed to be paid to the Official Liquidator within one month from the date of the order and accordingly, the same was deposited. It is further submitted that thereafter Company Appeal No.16/2008 had been filed by the respondent company in which a compromise was entered into between the parties and on the basis of the terms of the compromise the appeal has been disposed of.

Learned counsel for the petitioner submits that in view of the fact that the company appeal has been disposed of and nothing remains to be done, the Official Liquidator should be

directed to refund the amount of Rs.2,00,000/- deposited by the petitioner-company on the direction of this Court.

The Official Liquidator, on the other hand, submits that the order dated 31.7.2008 directs that as an interim order with regard to payment of the cost, the petitioner-company shall pay a sum of Rs. 2,00,000/- (Rupees Two Lacs) to the Official Liquidator. That being the position, there was nothing in the said order that the same would be liable to any adjustment or any refund. It is further submitted that the order dated 31.7.2008 stood merged in the order dated 24.10.2008 of the Division Bench in Company Appeal No.16 of 2008 on the basis of the compromise entered into between the parties and if at all any order of refund had to be passed, the same should have been obtained by the petitioner from the Division Bench itself. There is nothing in the order dated 24.10.2008 of the Appellate Bench in which a direction has been issued to return the said amount.

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It is further submitted by the Official Liquidator that the petitioner has misused the process of the Court by filing company petition so as to get a decree under another litigation executed and realized; otherwise had the matter proceeded, the Official Liquidator would have been entitled to manifold higher amount on the said amount of Rs.6.50 crores being recovered by

the petitioner-company through winding up proceeding and for the said reasons also the petitioner is not entitled to any refund.

On a consideration of the aforesaid facts and circumstances, this Court finds sufficient force in the submission of the Official Liquidator. In terms of the compromise itself, the order dated 31.7.2008 in Company Petition No.6 of 2006 would be rendered infructuous on carrying out of the terms of the compromise. There is nothing in the terms of compromise indicating the refund of the amount of Rs.2,00,000/-. In any case, since the entire matter was before the Appellate Bench any order for refund under the order dated 31.7.2008, which was directly under challenge in the said appeal proceedings, ought to have been obtained from the Appellate Bench. If the same was not done, it is not open to the petitioner to have the order dated 31.7.2008 reopened in this Court, that too, in an application filed for withdrawal of the company petition. Thus, the prayer for direction to the Official Liquidator to pay a sum of Rs.2,00,000/- with interest is rejected.

So far as the prayer for withdrawal of the company petition is concerned, in view of the compromise recorded in the appeal proceedings before the Appellate Bench, which provided for withdrawal of the company petition, the leave of the Court is

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fit to be granted for withdrawal of the company petition.

The company petition is, accordingly, dismissed as withdrawn.

VPS ( Ramesh Kumar Datta, J. )

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